IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 1029 of 2007()

CMP.5123/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

.....

REVN. PETITIONER: PETITIONER

K.A.BENDICT, S/O.ANASTHEL,
KUNNEL, THEKKUM MURI, PADINJATTUMKARA,
THURAVOOR, CHERTHALA.

BY ADV. SRI.LIJU. M.P
SRI.R.RAMESH

RESPONDENTS:

---

1. V.R.SASIKUMAR, S/O.RAJAPPAN ACHARI,
VALLAYIL (NANDANAM), VADAKKUM MURI,
PADINJATTUNKARA, KUTHIYATHODU, CHERTHALA.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.P.MURALEEDHARAN (THURAVOOR)
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

....

Crl. R.P. No. 1029 of 2007

.....

Dated: 16-10-2007

O R D E R

The revision petitioner was the complainant in a private complaint filed under Section 138 of the Negotiable Instruments Act, 1881, before the J.F.C.M.-I, Cherthala. The cheque involved in this case is for a sum of Rs. 1,40,000/- and is dated 15-12-2005. The complaint was filed on 31-8-2006. Since it was filed beyond the period of limitation with a delay of 17 days, he also filed C.M.P. 5123 of 2006 for condoning the delay. The reason put forward in support of the delay was that based on the same cheque he had instituted a civil suit as O.S. No. 39 of 2006 before the Sub Court, Cherthala, and the original cheque was produced before the civil court and he had to obtain the cheque back from the civil court after substituting the same with a certified copy for which process, it took 10 days. Thereafter, he was afflicted with conjunctivitis for one week.

2. The condonation of the delay was opposed by the first respondent/accused. The court below as per the impugned order dated, 9-1-2007 refused to condone the delay holding inter alia that there was no bar in filing the criminal complaint with photocopies of the cheque, dishonour memo, etc. and that no medical certificate was produced to show that the complainant had contracted inflammation of his eyes.

3. I heard the learned counsel for the revision petitioner/complainant and the learned counsel for the first

respondent. The learned counsel for the first respondent submitted that the reasons given by the court below do not warrant interference. I cannot agree. The court below was taking a hyper technical view in the matter of condoning the delay. There is no dispute that the original cheque had been produced before the civil court in the suit instituted by the revision petitioner against the respondent.

3. From the facts and circumstances of the case, it cannot be said that the revision petitioner/complainant was guilty of gross laches so as to deserve dismissal of his petition to condone the delay. The order passed by the court below is accordingly set aside and C.M.P. 5123 of 2006 will stand allowed and, resultantly, the complaint shall be taken on file after following the formalities. Both parties shall appear before the Magistrate without any further notice on **19-11-2007.**

V. RAMKUMAR, JUDGE

ani.